IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3555 of 2001

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALSAD VIBHAG KHETIPAK RUPANTAR & VECHANKARNARI

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MRS MANISHA SHAH, AGP, for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 20/12/2004

ORAL JUDGEMENT

1. The petitioner herein has challenged the orders at Annexures A, B, C and D passed by the respondents herein.

2. The President of the petitioenr society was Chairman of Valsad District Cooperative Bank Ltd. According to the petitioner, because of political rivalry, he has been removed under section 81 of the Act and the petitioner society has been issued a letter on 3.11.1995 to the petitioner on the ground that the petitioner has not commenced functioning since its registration. The petitioner filed appeal against the said communication which was dismissed by respondent no.2. Petitioner therefore approached respondent no.1 by way of revision which also came to be rejected. Hence the present petition.

3. Mr. B.S. Patel for the petitioner contended that the order at Annexure-A has been passed under section 107(1)(c)(1) of the Act, but no notice has been issued under section 20 of the Act to the petitioner. He further submitted that the order at Annexure-A is drastic in nature and as per law laid down by this Court in the case of Apexa Cooperative Societies Ltd. Vs. District Registrar, reported in 1993(2) GLH 861, no order under section 107 of the Act can be passed without giving opportunity of being heard to the petitioner. Mr. Patel has also submitted that the respondent no.3 has not considered the fact that the petitioner society is not indebted to any financial institution or anyone and therefore provisions of section 107 will not be attracted.

4. From the record it is clear that no opportunity of being heard i.e. issuance of show cause notice and hearing, has been afforded to the petitioner as contemplated under the Act. Looking to the facts of the case I am of the opinion that the ratio laid down in the case of Apexa Cooperative Societies Ltd. (supra) is squarely applicable to the present case. Learned counsel for the respondent is unable to dispute this position. Therefore the present petition is required to be allowed.

5. In the premises aforesaid, the petition is allowed. The impugned orders at Annexures A, B, C and D are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]
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